

**PERMANENT BUILDING SOCIETIES (AMENDMENT) ACT  
1989 No. 225**

**NEW SOUTH WALES**



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**PERMANENT BUILDING SOCIETIES (AMENDMENT) ACT  
1989 No. 225**

**NEW SOUTH WALES**



**Act No. 225, 1989**

An Act to amend the Permanent Building Societies Act 1967 to make further provision with respect to shareholdings in permanent building societies. [Assented to 21 December 1989]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Permanent Building Societies (Amendment) Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Permanent Building Societies Act 1967 No. 18**

3. The Permanent Building Societies Act 1967 is amended as set out in Schedule 1.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 3B:

After section 3A, insert:

**Savings and transitional provisions**

3B. Schedule 6 has effect.

(2) Section 46A (**Application of Division**):

Omit section 46A (1) (d), insert instead:

(d) a proposed:

(i) acquisition of; or

(ii) offer to acquire; or

(iii) invitation in relation to acquiring,

relevant interests in a class of shares of a society where the acquisition of those interests would result in the limitation of shareholding imposed by section 64I (1) (b) of this Act, or section 47B (3) (b) of the Co-operation Act 1923, being exceeded.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) Section 52A (**Limitation of shareholding**):

Omit the section.

(4) Part 5A:

After Part 5, insert:

**PART 5A - SHAREHOLDING RESTRICTIONS**

**Division 1 - Definitions etc.**

**What constitutes a "relevant interest" in shares**

64D. (1) For the purposes of this Part, a person has a relevant interest in a share in a society if:

- (a) the person or an associate of the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of that share capital; or
- (b) the person or an associate of the person has power to dispose of or to exercise control over the disposal of the share; or
- (c) the person or an associate of the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

(2) It is immaterial for the purposes of this section whether a power that a person has is express or implied or formal or informal, is exercisable alone or jointly with another person or other persons, cannot be related to a particular share, or is, or is capable of being made, subject to restraint or restriction, and any such power exercisable jointly with another person or other persons is to be considered to be exercisable by either or any of those persons.

(3) A reference in this section to power or control includes a reference to power or control that is direct or indirect or is, or is capable of being, exercised as a result of, or by means of, or in breach of, or by revocation of, trusts, agreements, arrangements, understandings and

SCHEDULE 1 - AMENDMENTS - *continued*

practices, or any of them, whether or not they are enforceable, and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

(4) Without limiting the generality of subsections (1) - (3), where a body corporate has, or is by virtue of this section to be considered to have, a power and:

- (a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power; or
- (b) a person has a controlling interest in the body corporate,

that person is, for the purposes of this section, to be considered to have the same power in relation to that share as the body corporate has or is to be considered to have.

(5) Where a body corporate has, or is by virtue of this section (other than this subsection) to be considered to have, a power, a person (in this subsection referred to as the "relevant person") is, for the purposes of this section, to be considered to have the same power in relation to that share as the body corporate has, or is to be considered to have, if:

- (a) the relevant person has; or
- (b) a person associated with the relevant person has; or
- (c) persons associated with the relevant person together have; or
- (d) the relevant person and a person or persons associated with the relevant person together have,

the power to exercise, or to control the exercise of, the voting power attached to not less than 20 per cent or such other proportion as may be prescribed of the voting shares in the body corporate.

SCHEDULE 1 - AMENDMENTS - *continued*

(6) Where a person:

- (a) has entered into an agreement with respect to an issued share; or
- (b) has a right relating to an issued share, whether the right is enforceable presently or in the future and whether on the fulfilment of a condition or not; or
- (c) has an option with respect to an issued share,

and, on performance of the agreement, enforcement of the right or exercise of the option, that person would have a relevant interest in the share, the person is, for the purposes of this section, to be considered to have that relevant interest in the share.

(7) For the purposes of this section, where a body corporate is, by virtue of subsection (6), to be considered to have a relevant interest in a share and:

- (a) the body corporate or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the withdrawal of, or the exercise of control over the withdrawal of, the share capital subscribed for that share or in relation to the exercise of, or the control of the exercise of, any right to vote conferred on the holder of the share, or in relation to the disposal of, or the exercise of control over the disposal of, that share; or
- (b) a person has a controlling interest in the body corporate; or
- (c) a person has power to exercise, or to control the exercise of, the voting power attached to not less than 20 per cent or such other proportion as may be prescribed of the voting shares in the body corporate,

that person is to be considered to have a relevant interest in that share.

SCHEDULE 1 - AMENDMENTS - *continued*

(8) A body corporate may, by virtue of this section, be considered for the purposes of this Part to have a relevant interest in a share in the body corporate itself.

(9) A relevant interest in a share is not to be disregarded by reason only of:

- (a) its remoteness; or
- (b) the manner in which it arose.

(10) A director of a society is not to be considered to have a relevant interest in a share in the society merely because the director is entitled to withhold consent to a transfer of the share.

(11) The regulations may provide that relevant interests, or particular classes of relevant interests, in shares in societies, or in particular classes of societies, are, in such circumstances and subject to such conditions (if any) as are specified in the regulations, to be disregarded for the purposes of this section.

**Meaning of "associate"**

64E. (1) A reference in this Part to an associate of a person is to be construed as a reference to:

- (a) if the person is a corporation:
  - (i) a director or secretary of the corporation; or
  - (ii) a corporation that is related to that person; or
  - (iii) a director or secretary of such a related corporation;
- (b) where the matter to which the reference relates is shares in a corporation (including, in a case where the first-mentioned person is a corporation, the first-mentioned person) - a person (in this paragraph referred to as the "relevant associate"), being the corporation or any other person, with whom the first-mentioned person has, or proposes to enter into, an agreement, arrangement,



SCHEDULE 1 - AMENDMENTS - *continued*

understanding or undertaking, whether formal or informal and whether express or implied:

- (i) by reason of which the relevant associate, or the first-mentioned person, may exercise, may directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power attached to a share in the corporation; or
  - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or
  - (iii) under which the relevant associate may acquire from the first-mentioned person, or the first-mentioned person may acquire from the relevant associate, shares in the corporation; or
  - (iv) under which the relevant associate, or the first-mentioned person, may be required to dispose of shares in the corporation in accordance with the directions of the first-mentioned person, or of the relevant associate, as the case may be; or
- (c) a person in concert with whom the first-mentioned person is acting, or proposes to act, in respect of the matter to which the reference relates; or
  - (d) a person with whom the first-mentioned person is, by virtue of the regulations, to be regarded as associated in respect of the matter to which the reference relates; or
  - (e) a person with whom the first-mentioned person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
  - (f) if the first-mentioned person has entered into, or proposes to enter into, a transaction, or has done or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned

SCHEDULE 1 - AMENDMENTS - *continued*

in paragraph (b), (c), (d), or (e) - that last-mentioned person.

(2) A person is not to be taken to be an associate of another person by virtue of subsection (1) (b), (c), (d), (e) or (f) by reason only that:

- (a) one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his or her professional capacity or to his or her business relationship with the other person; or
- (b) without limiting the generality of paragraph (a), where the ordinary business of one of those persons includes dealing in securities - specific instructions are given to the person by or on behalf of the other person to acquire shares on behalf of the other person in the ordinary course of that business.

(3) For the purposes of subsection (1) (b), it is immaterial that the power of a person to exercise, control the exercise of, or influence the exercise of, voting power is in any way qualified.

(4) The registrar may, in the registrar's discretion, issue to a nominee corporation a certificate declaring the nominee corporation to be an approved nominee corporation for the purposes of this section and may at any time, in the registrar's discretion, by notice in writing to the nominee corporation, revoke the certificate.

(5) The registrar may, in the registrar's discretion, issue to any person a certificate declaring that specified shares in which that person has a relevant interest are to be disregarded for the purposes of ascertaining the shares to which another person specified in the certificate is entitled, and may at any time, in the registrar's discretion, by notice in writing to the first-mentioned person, revoke the certificate.

SCHEDULE 1 - AMENDMENTS - *continued*

**Inadvertence, mistake, officers in default**

64F. (1) In determining, for the purposes of a provision of this Part, whether or not a person's contravention of such a provision was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or occurrence, a person's ignorance of, or a mistake on the person's part concerning, a matter of law is to be disregarded.

(2) A reference in this Part to an officer of a society or other body corporate who is in default in respect of a contravention of a provision of this Part is a reference to an officer (including a person who has subsequently ceased to be an officer) who is in any way, by act or omission, directly or indirectly knowingly concerned in or party to the contravention.

**Miscellaneous interpretative provisions**

64G. (1) For the purposes of this Part:

- (a) a reference to a corporation or a body corporate includes a reference to a society; and
- (b) a reference to voting power or a right to vote attached to a share in a body corporate, is, if the body corporate is a society, to be read as a reference to the right to vote conferred on the holder of a share in the body corporate; and
- (c) corporations are to be considered to be related if they would be considered to be related for the purposes of the Companies (New South Wales) Code.

(2) For the purposes of subsection (1) (c), a reference in the Companies (New South Wales) Code to a corporation is to be considered to include a reference to a society.

**Extra-territorial operation of Part**

64H. (1) The obligation to comply with this Part extends to all natural persons, whether resident in the State or in Australia or not and whether Australian citizens or not,

SCHEDULE 1 - AMENDMENTS - *continued*

and to all bodies corporate or unincorporate, whether incorporated or carrying on business in the State or in Australia or not.

(2) This Part extends to acts done or omitted to be done outside the State, whether in Australia or not.

**Division 2 - Maximum shareholdings**

**Maximum permissible shareholding**

64I. (1) For the purposes of this Division, a person has greater than the maximum permissible shareholding in a society if the person has relevant interests:

- (a) in the fixed shares of a society exceeding 10 per cent, or such other percentage as may be prescribed, of the nominal value of all fixed shares issued by the society; or
- (b) in the shares of a society (being shares of a class other than fixed shares or any other prescribed class) exceeding 20 per cent, or such other percentage as may be prescribed, of the nominal value of all shares of that class issued by the society; or
- (c) in the shares of a society (whether or not including fixed shares or shares of any other class) exceeding 20 per cent, or such other percentage as may be prescribed, of the nominal value of all shares issued by the society.

(2) A percentage applicable under subsection (1) (a), (b) or (c) may be varied in its application to a particular society by being decreased by the rules of the society.

**Consequences of exceeding maximum permissible shareholding**

64J. (1) If a person (referred to in this section as "the offender") has greater than the maximum permissible shareholding in a society:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) the board of the society must, on becoming aware of that fact, direct the holders of shares in which the offender has a relevant interest to dispose of such number of shares as may be necessary to ensure that the offender does not have greater than the maximum permissible shareholding; and
- (b) any entitlement to vote conferred on the holder of a share in the society in which the offender has a relevant interest is suspended and cannot be exercised; and
- (c) any vote cast in contravention of paragraph (b) is to be disregarded.

(2) A direction under this section is to be given in writing and must (subject to any order of the Court under section 64K) be complied with by the shareholder concerned within 1 month after it is given.

Maximum penalty: 100 penalty units.

(3) A direction requiring the disposal of shares is not to be considered to have been complied with unless the disposal of the shares results in the offender ceasing to have a relevant interest in the shares.

(4) Where any question arises under this section as to which of the shares that a person has a relevant interest in are to be disposed of, the question is to be determined:

- (a) in accordance with the rules of the society concerned; or
- (b) to the extent that the rules do not make provision for the determination of the question, in such manner as the board thinks appropriate.

**Court may make orders in respect of disposal**

64K. (1) If a person has been directed by the board of a society under section 64J to dispose of shares, the Supreme Court may, on the application of the registrar, the society or the shareholder, order that the disposal is to be made within such time and subject to such conditions (if any) as the Court thinks fit.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) If the Court thinks fit, the order may be made subject to a condition that the disposal is not to be made to a particular person or persons or to persons included in a particular class or classes of persons.

**Exceptions**

64L. Section 64J does not apply to an offender:

- (a) who is a holding society created in accordance with section 39A of this Act or section 68A of the Co-operation Act 1923; or
- (b) who acquired the relevant interests concerned in accordance with an approval given under Division 6 of Part 3 (Review of certain proposals for amalgamation, transfer of engagements etc.); or
- (c) who has the relevant interests concerned as a result of a share issue and those relevant interests represent a proportion of the issued shares of the society concerned no greater than the proportion which the person had before the share issue.

**Division 3 - Substantial shareholdings**

**Substantial shareholding and shareholders - meaning**

64M. (1) For the purposes of this Part, a person has a substantial shareholding in a society if:

- (a) in the case of a society the shares in which are not divided into classes of shares - the person is entitled to not less than 5 per cent of the nominal value of all shares issued by the society; or
- (b) in the case of a society the shares in which are divided into 2 or more classes of shares - the person is entitled to not less than 5 per cent of the nominal value of all shares in one of those classes.

(2) For the purposes of this Part, the shares in a society to which a person ("the relevant person"), being the society or any other person, is entitled include:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) shares in which the person has a relevant interest; and
- (b) except in the case where the relevant person is a nominee corporation in respect of which a certificate by the registrar is in force under section 64E (4) - shares in which an associate of the person has a relevant interest,

but do not include shares in which an associate of the relevant person has a relevant interest and in respect of which that associate has obtained a certificate from the registrar under section 64E (5).

(3) For the purposes of this Part, a person who has a substantial shareholding in a society is a substantial shareholder in the society.

**Notifiable change - meaning**

64N. (1) For the purposes of this Division, a notifiable change in the entitlement of a person to shares in a society is to be taken to occur if, and only if, there occurs a change in the relevant interest or relevant interests of the person, or in the relevant interest or relevant interests of an associate of the person, in shares in the society.

(2) For the purposes of subsection (1), but without limiting the generality of that subsection, where a person acquires, or disposes of, shares in a society, a change in the relevant interest or relevant interests of the person in shares in the society is to be considered to have occurred.

**Time when substantial shareholding notice required**

64O. For the purposes of this Division:

- (a) a person who becomes required to give a notice under section 64P (1) is to be taken to have become, at the time when the person became a substantial shareholder in the society, required to give a substantial shareholding notice to the society; and
- (b) a person who becomes required to give a notice under section 64Q (1) is to be taken to have

SCHEDULE 1 - AMENDMENTS - *continued*

become, immediately after the change referred to in section 64Q (1) (a), required to give a substantial shareholding notice to the society.

**Substantial shareholder to notify society of interests**

64P. (1) A person who is a substantial shareholder in a society must give to the society a notice in the prescribed form that:

(a) states:

- (i) the person's name and address; and
- (ii) the prescribed particulars of the shares in the society in which the person or an associate of the person has a relevant interest or relevant interests (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder); and
- (iii) the prescribed particulars of each such interest; and
- (iv) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the person or the associate acquired that interest or has that interest; and

(b) is accompanied by the prescribed documents.

(2) A person required to give a notice under subsection (1) must give the notice within 7 business days after that person becomes aware of the relevant interest or interests by virtue of which the person is a substantial shareholder.

(3) The notice must be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (2).



SCHEDULE 1 - AMENDMENTS - *continued*

**Substantial shareholder to notify society of changes in interests**

64Q. (1) Where:

- (a) there occurs at a particular time a notifiable change in the entitlement of a person to shares in a society; and
- (b) immediately before the change, the person was a substantial shareholder in the society; and
- (c) immediately after the change, the person is a substantial shareholder in the society and is entitled to a percentage of the shares included in a class of shares in the society, being a percentage that is greater than, or less than, by 1 per cent of the shares included in that class, the percentage of the shares included in that class to which the person was entitled at the time (in this subsection referred to as the "relevant time") when the person last became required to give a substantial shareholding notice to the society,

the person must give to the society a notice in the prescribed form that:

- (d) sets out the person's name; and
- (e) sets out, in relation to each notifiable change in the entitlement of the person to shares in the society (not being a prescribed change) that occurred during the period commencing at the relevant time and ending immediately after the time referred to in paragraph (a):
  - (i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate; and
  - (ii) the date of the change and the prescribed particulars of the change; and
  - (iii) the prescribed particulars of any contract, scheme or arrangement, or any other

SCHEDULE 1 - AMENDMENTS - *continued*

circumstances, by reason of which the change occurred; and

(f) is accompanied by the prescribed documents.

(2) For the purposes of subsection (1), where the shares in a society are not divided into 2 or more classes, those shares are to be considered to constitute a class.

(3) A person required to give a notice under subsection (1) must give the notice within 7 business days after that person becomes aware of the change referred to in subsection (1) (a).

**Person who ceases to be a substantial shareholder to notify society**

64R. (1) A person who ceases at a particular time (in this subsection referred to as the "relevant time") to be a substantial shareholder in a society must give to the society a notice in the prescribed form that:

- (a) sets out the person's name; and
- (b) sets out, in relation to each notifiable change in the entitlement of the person to shares in the society (not being a prescribed change) that occurred during the period commencing at the time when the person last became required to give a substantial shareholding notice to the society and ending at the relevant time:
  - (i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate; and
  - (ii) the date of the change and the prescribed particulars of the change; and
  - (iii) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the change occurred; and
- (c) sets out the date on which the person ceased to be a substantial shareholder in the society and the

SCHEDULE 1 - AMENDMENTS - *continued*

prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the person ceased to be a substantial shareholder in the society; and

(d) is accompanied by the prescribed documents.

(2) A person required to give a notice under subsection (1) must give the notice within 7 business days after the person becomes aware that the person or an associate has ceased to have a relevant interest or relevant interests in a share or shares in the society to the extent necessary to make the person a substantial shareholder in the society.

**Circumstances to be stated in notice - operation of section 64D**

64S. The circumstances required to be stated in a notice under section 64P, 64Q or 64R include circumstances by reason of which, having regard to the provisions of section 64D:

- (a) a person has a relevant interest in shares; or
- (b) a change has occurred in a relevant interest in shares; or
- (c) a person has ceased to be a substantial shareholder in a society,

respectively.

**Registrar may extend period for giving notice under this Division**

64T. (1) The registrar may, on the application of a person who is required to give a notice under this Division, in the registrar's discretion, extend, or further extend, the period for giving the notice.

(2) An application for an extension under subsection (1) may be made, and the power of the registrar under that subsection may be exercised, notwithstanding that the period referred to in that subsection has expired.

SCHEDULE 1 - AMENDMENTS - *continued*

**Society to keep register of substantial shareholders**

64U. (1) A society is to keep a register in which it must forthwith enter:

- (a) in alphabetical order the names of persons from whom it has received notices under section 64P; and
- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 64Q or 64R, the information given in that notice.

(2) The register is to be open for inspection by any member of the society without charge.

(3) If default is made in complying with this section, the society and any officer of the society who is in default are each guilty of an offence.

Maximum penalty: 5 penalty units.

(4) A society is not, by reason of anything done under this Division:

- (a) to be taken for any purpose to have notice of; or
- (b) put upon inquiry as to,

a right of a person to or in relation to a share in the society.

**Offences against certain sections**

64V. A person who fails to comply with section 64P, 64Q or 64R is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

**Civil remedy where failure or default under Division**

64W. (1) A person who fails to comply with section 64P, 64Q or 64R is liable to pay, to any person who suffers loss or damage as a result of the failure, damages in respect of that loss or damage, unless it is proved that the failure was due to the inadvertence or mistake of the first-mentioned person or to his or her not being aware of a relevant fact or occurrence.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) If default is made in complying with section 64U and an officer or officers of the society is or are in default:

- (a) the society; and
- (b) that officer or each of those officers, as the case may be,

are jointly and severally liable to pay, to any person who suffers loss or damage as a result of the default, damages in respect of that loss or damage.

**Knowledge of employee or agent imputed to employer or principal**

64X. In any proceedings under section 64W or 64ZJ, a person is, in the absence of proof to the contrary, to be presumed to have been aware at a particular time of a fact or occurrence of which an employee or agent of the person having duties or acting in relation to a relevant interest or relevant interests of his or her employer or principal in a share or shares in the society concerned was aware at the time.

**Division 4 - Power of societies to obtain information**

**Definitions**

64Y. In this Division:

"**primary notice**", in relation to shares in a society, means a notice in writing addressed to the holder of the shares requiring the holder to furnish to the society a statement in writing setting out:

- (a) full particulars of his or her relevant interest in the shares and of the circumstances by reason of which he or she has that interest; and
- (b) so far as it lies within his or her knowledge:
  - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (ii) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
- (iii) full particulars of the name and address of each person (if any) who has given to the holder of the shares relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given;

**"relevant instructions"**, in relation to shares, means instructions or directions:

- (a) in relation to the withdrawal of share capital subscribed for the shares; or
- (b) in relation to the acquisition or disposal of the shares; or
- (c) in relation to the exercise of any voting or other rights conferred on the holder of the shares; or
- (d) in connection with any other matter relating to the shares;

**"secondary notice"**, in relation to shares in a society, means a notice in writing addressed to a person requiring the person to furnish to the society a statement in writing setting out:

- (a) full particulars of any relevant interest that the person has in any of the shares and of the circumstances by reason of which he or she has that interest; and
- (b) so far as it lies within his or her knowledge:
  - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares; and
  - (ii) full particulars of each such interest, and of the circumstances by reason of

SCHEDULE 1 - AMENDMENTS - *continued*

- which the other person has that interest; and
- (iii) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given.

**Issue of primary notice**

64Z. A primary notice in relation to particular shares in a society:

- (a) may be given, to the holder of the shares, by the society at any time; and
- (b) must be given, to the holder of the shares, by the society within 7 days after receiving a notice from the registrar requiring the society to do so.

**Issue of secondary notice**

64ZA. (1) Where a society receives, pursuant to a primary notice or secondary notice given to a person in relation to particular shares in the society, information that:

- (a) another person has a relevant interest in any of the shares; or
- (b) another person has given relevant instructions in relation to any of the shares,

a secondary notice in relation to the first-mentioned shares:

- (c) may be given to the other person by the society at any time; and
- (d) subject to subsection (2), must be given to the other person by the society within 7 days after receiving the information, if the information was received

SCHEDULE 1 - AMENDMENTS - *continued*

pursuant to a notice that was required by section 64Z (b) or by this paragraph to be given.

(2) Where:

- (a) a society has received a notice from the registrar requiring the society to give a primary notice to a holder of shares in the society; and
- (b) the society receives a notice in writing from the registrar to the effect that the society is no longer required to comply with subsection (1) in relation to those shares,

then, notwithstanding anything in this section, the society is not required to give any secondary notices or any further secondary notices, as the case requires, in relation to those shares pursuant to the first-mentioned notice.

**Application to registrar by recipient of notice**

64ZB. (1) A person who:

- (a) receives a primary notice or secondary notice in relation to shares in a society; and
- (b) believes that there are special reasons why particular information that the notice requires him or her to furnish to the society should not be so furnished, or should be so furnished only in a particular form,

may, within 7 business days after he or she receives the notice, apply to the registrar for a certificate under subsection (2).

(2) Where, on application made by a person under subsection (1), the registrar is satisfied that there are special reasons why particular information should not be furnished to a society, or should be so furnished only in a particular form, the registrar may give the person a certificate either:

- (a) referring to the information and stating that the information need not be furnished to the society; or



**SCHEDULE 1 - AMENDMENTS - *continued***

- (b) referring to the information and stating that the information need only be furnished to the society in a form specified in the certificate,  
as the case may be.

**Compliance with notices**

64ZC. (1) A person who receives a primary notice or secondary notice in relation to shares in a society must, unless within 7 business days after the day on which he or she receives the notice he or she applies to the registrar under section 64ZB in relation to particular information that the notice requires him or her to furnish to the society, comply with the notice within 7 business days after that day.

(2) A person who:

- (a) receives a primary notice or secondary notice in relation to shares in a society; and
- (b) applies to the registrar under section 64ZB for a certificate in relation to particular information that the notice requires him or her to furnish to the society,

must, forthwith after applying to the registrar under section 64ZB, notify the society that he or she has so applied, and must, within 7 business days after receiving notice of the decision of the registrar in relation to his or her application:

- (c) except in a case to which paragraph (d) applies - comply with the primary notice or secondary notice, as the case may be; or
- (d) if the registrar has given him or her a certificate under section 64ZB in relation to some or all of that information, furnish to the society a copy of the certificate together with a statement in writing:
  - (i) setting out so much of the information required by the primary notice or secondary notice, as the case may be, as is not referred to in the certificate; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (ii) if the certificate states that particular information need only be furnished to the society in a specified form - setting out that information in that form.

**Society to keep register**

64ZD. (1) A society must keep a register of the information received by the society pursuant to notices given under this Division being either a register containing:

- (a) the name of each holder of shares in the society to whom the society has given a primary notice; and
- (b) against each such name:
  - (i) the name and address of each other person (if any) who, according to information received by the society under this Division, has a relevant interest in any of the shares, together with particulars of the interest and of the circumstances by reason of which the other person has the interest; and
  - (ii) the name and address of each person who, according to information received by the society under this Division, has given relevant instructions in relation to any of the shares, together with particulars of the relevant instructions; and
- (c) in relation to each item of information entered in the register, the date on which the item was so entered,

or a register in such other form as the registrar approves.

(2) The register is to be open for inspection by any member of the society without charge.

(3) Information that is required by subsection (1) to be entered in a register must be so entered by the society within 2 business days after the society receives the information.

(4) A society is not, by reason of anything done under this section or Division 5 (Enforcement):

**SCHEDULE 1 - AMENDMENTS - *continued***

- (a) to be taken for any purpose to have notice of; or
  - (b) put upon inquiry as to,
- the right of a person to or in relation to a share in the society.

**Offences**

64ZE. (1) If a society fails to comply with section 64Z or 64ZA and an officer of the society is in default, the society and the officer are each guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

(2) A person who fails to comply with section 64ZC is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

(3) If default is made in complying with section 64ZD and an officer of the society is in default, the society and the officer are each guilty of an offence.

Maximum penalty: 5 penalty units.

**Liability for damages**

64ZF. (1) If a society fails to comply with section 64Z or 64ZA and an officer or officers of the society is or are in default:

- (a) the society; and
- (b) that officer or each of those officers, as the case may be,

are jointly and severally liable to pay, to any person who suffers loss or damage as a result of the failure, damages in respect of that loss or damage.

(2) A person who fails to comply with section 64ZC is liable to pay, to any person who suffers loss or damage as a result of the failure, damages in respect of that loss or damage, unless it is proved that the failure was due to the inadvertence or mistake of the first-mentioned person.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) If default is made in complying with section 64ZD and an officer or officers of the society is or are in default:

- (a) the society; and
- (b) that officer or each of those officers, as the case may be,

are jointly and severally liable to pay, to any person who suffers loss or damage as a result of the default, damages in respect of that loss or damage.

**Protection from frivolous or vexatious requests**

64ZG. A person:

- (a) is not guilty of an offence under section 64ZE (2); and
- (b) is not liable to pay damages under section 64ZF (2), in respect of a failure to furnish to a society information that a primary notice or secondary notice in relation to shares in the society required him or her to furnish to the society, if it is proved that:
  - (c) at the time when the person received the notice, the information appeared on a register kept by the society pursuant to this Division or Division 3; or
  - (d) the giving of the notice was for any reason frivolous or vexatious.

**Division 5 - Enforcement**

**Definition of "Court"**

64ZH. In this Division:

"Court" means the Supreme Court.

**Failure to dispose of shares as directed**

64ZI. If a person has failed to dispose of shares in a society as and when required to do so under Division 2, the Court may, on the application of the registrar or of the society, make either or both of the following orders:

**SCHEDULE 1 - AMENDMENTS - *continued***

- (a) an order directing the society not to make payment, or to defer making payment, of any sum or sums due from the society in respect of any shares to which the failure relates;
- (b) an order vesting in the registrar any shares to which the failure relates.

**Court orders - substantial shareholdings**

64ZJ. (1) Where a person (in this section referred to as the "substantial shareholder") is, or at any time after the commencement of this section has been, a substantial shareholder in a society and has failed to comply with section 64P, 64Q or 64R, the Court may, on the application of the registrar or of the society, whether or not that failure still continues, make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the following orders:

- (a) an order restraining the substantial shareholder, or a person who is an associate of the substantial shareholder, from disposing of, or of any interest in, shares in the society, being shares to which the substantial shareholder is entitled;
- (b) an order restraining a person who is, or is entitled to be registered as, the holder of shares in the society to which the substantial shareholder is or has been entitled from disposing of, or of any interest in, those shares;
- (c) an order restraining the exercise of any voting or other rights conferred on the holder of any shares in the society to which the substantial shareholder is or has been entitled;
- (d) an order directing the society not to make payment, or to defer making payment, of any sum or sums due from the society in respect of any shares to which the substantial shareholder is or has been entitled;

SCHEDULE 1 - AMENDMENTS - *continued*

- (e) an order directing the disposal of, or of any interest in, shares in the society to which the substantial shareholder is or has been entitled;
  - (f) an order vesting in the registrar shares in the society to which the substantial shareholder is or has been entitled, or any interest in such shares;
  - (g) an order directing the society not to register the transfer or transmission of specified shares;
  - (h) an order that any exercise of the voting or other rights conferred on the holder of specified shares in the society to which the substantial shareholder is or has been entitled be disregarded;
  - (i) an order cancelling a contract, arrangement or offer relating to specified shares in the society to which the substantial shareholder is or has been entitled;
  - (j) an order declaring a contract, arrangement or offer relating to specified shares in the society to which the substantial shareholder is or has been entitled to be voidable;
  - (k) for the purposes of securing compliance with any other order made under this section, an order directing the society or any other person to do or refrain from doing a specified act.
- (2) Where, at the hearing of an application under this section, it is proved to the satisfaction of the Court that:
- (a) a person is entitled to shares in a society by reason that another person who is, by virtue of section 64E, an associate of the first-mentioned person has a relevant interest in those shares; and
  - (b) that other person became entitled to that relevant interest within the period of 6 months immediately preceding the filing of the application with the Court,

then, in determining for the purposes of the application whether the first-mentioned person failed to comply with section 64P, 64Q or 64R, the proof to the satisfaction of the Court of the matters mentioned in paragraphs (a) and (b)

SCHEDULE 1 - AMENDMENTS - *continued*

of this subsection constitutes prima facie evidence that the other person was, for the purposes of section 64E, an associate of the first-mentioned person from the time when that other person became entitled to that relevant interest until the date of the hearing.

(3) Without limiting the nature of the orders that may be made by the Court under subsection (1) directing the disposal of, or of an interest in, a share in a society, such an order may include one or more of the following provisions:

- (a) a provision that the disposal is to be made within such time and subject to such conditions (if any) as the Court thinks fit, including, if the Court thinks fit, a condition that the disposal must not be made to a person who is, or as a result of the disposal, would become, a substantial shareholder in the society;
- (b) a provision that a person specified in the order is liable to pay to the society an amount equal to the amount of any profit made by the person as a result of, or in connection with, the disposal of the shares;
- (c) a provision that a person specified in the order is, for all purposes connected with the disposal of the shares, to be regarded as holding the shares as a trustee for the beneficial owner of the shares.

(4) The Court is not to make an order under this section, other than an order referred to in subsection (1) (c) or (h), if it is satisfied:

- (a) that the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to his or her inadvertence or mistake or to his or her not being aware of a relevant fact or occurrence; and
- (b) that, in all the circumstances, the failure ought to be excused.

SCHEDULE 1 - AMENDMENTS - *continued*

**Powers of court for purposes of Division 4**

64ZK. (1) Where:

- (a) a person has failed to comply with section 64ZC in relation to a notice given to the person under section 64Z or 64ZA in relation to shares in a society (whether or not the failure still continues); or
- (b) a person has, in a statement furnished to a society pursuant to a notice given to the person under section 64Z or 64ZA in relation to shares in the society, stated that particular information in relation to any of the shares or in relation to a person:
  - (i) who has a relevant interest in any of the shares; or
  - (ii) who has given in relation to any of the shares relevant instructions within the meaning of Division 4,

does not lie within his or her knowledge,

the Court may, on the application of:

- (c) the society; or
- (d) if the notice was required by section 64Z (b) or 64ZA (1) (d) to be given by the society by reason of a notice received by the society from the registrar - the registrar,

make in relation to any of the shares such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the orders referred to in subsection (2).

(2) The orders the Court may make under subsection (1) in relation to shares are as follows:

- (a) an order restraining the holder of the shares from disposing of, or of any interest in, the shares;
- (b) an order restraining the exercise of any voting or other rights conferred on the holder of the shares;



SCHEDULE 1 - AMENDMENTS - *continued*

- (c) an order directing the society not to make payment, or to defer making payment, of any sum or sums due from the society in respect of the shares;
- (d) an order directing the disposal of, or of any interest in, the shares;
- (e) an order vesting in the registrar the shares, or any interest in the shares;
- (f) an order directing the society not to register the transfer or transmission of the shares;
- (g) an order that any exercise of the voting or other rights conferred on the holder of the shares be disregarded;
- (h) an order cancelling a contract, arrangement or offer relating to the shares;
- (i) an order declaring a contract, arrangement or offer relating to the shares to be voidable;
- (j) for the purposes of securing compliance with any other order made under this section, an order directing the society or any other person to do or refrain from doing a specified act.

(3) Without limiting the nature of the orders that may be made by the Court under subsection (1) directing the disposal of, or of an interest in, a share in a society, such an order may include one or more of the following provisions:

- (a) a provision that the disposal must be made within such time and subject to such conditions (if any) as the Court thinks fit, including, if the Court thinks fit, a condition that the disposal must not be made to a particular person or persons or to persons included in a particular class or classes of persons;
- (b) a provision that a person specified in the order is liable to pay to the society an amount equal to the amount of any profit made by the person as a result of, or in connection with, the disposal of the shares;
- (c) a provision that a person specified in the order is, for all purposes connected with the disposal of the

SCHEDULE 1 - AMENDMENTS - *continued*

shares, to be regarded as holding the shares as a trustee for the beneficial owner of the shares.

(4) Where a person has failed to comply with section 64ZC in relation to a notice given to the person under section 64Z or 64ZA in relation to shares in a society, the Court is not to make an order under this section in relation to any of the shares if it is satisfied:

- (a) that, at the time when the person received the notice, the information that the notice required him or her to furnish to the society appeared on a register kept by the society pursuant to Division 3 or 4; or
- (b) that the giving of the notice was for any reason frivolous or vexatious.

(5) Where a person has failed to comply with section 64ZC in relation to shares in a society, the Court is not to make an order under this section in relation to any of the shares, other than an order referred to in subsection (2) (b) or (g), if it is satisfied:

- (a) that the failure was due to the person's inadvertence or mistake; and
- (b) that, in all the circumstances, the failure ought to be excused.

**Interim orders**

64ZL. (1) Where an application is made to the Court for an order under this Part, the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(2) Where the registrar makes an application to the Court for the making of an order under subsection (1) the Court is not to require the registrar or any other person, as a condition of granting an interim order under subsection (1), to give any undertakings as to damages.

**SCHEDULE 1 - AMENDMENTS - *continued***

**Order may include ancillary provisions**

64ZM. An order under this Part may include such ancillary or consequential provisions as the Court thinks just.

**Failure to dispose of share or interest**

64ZN. The Court may direct that, where a share, or an interest in a share, is not disposed of in accordance with an order of the Court under this Part, the share or interest vests in the registrar.

**Order not to be unfairly prejudicial**

64ZO. The Court is not to make an order under this Part if it is satisfied that the order would unfairly prejudice any person.

**Court may direct that notice be published**

64ZP. The Court may, before making an order under this Part, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

**Variation etc. of orders**

64ZQ. The Court may rescind, vary or discharge an order made by it under this Part or suspend the operation of such an order.

**Penalty**

64ZR. (1) A person who contravenes or fails to comply with an order under this Part that is applicable to the person is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

**SCHEDULE 1 - AMENDMENTS - *continued***

(2) Where an offence under subsection (1) is committed by a corporation, each officer of the corporation who is in default is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

**Registrar may deal with interests vested in the registrar**

64ZS. Where a share or an interest in a share vests in the registrar by virtue of an order under this Part or of a direction under section 64ZN:

- (a) the registrar may, subject to any directions of the Court, get in, sell or otherwise dispose of, or deal with, the share or interest as the registrar sees fit; and
- (b) the registrar is to apply any money received in the exercise of a power under paragraph (a) in defraying the costs and expenses of and incidental to the exercise of that power and is to pay the remainder to the Treasurer for payment into the Consolidated Fund.

(5) Schedule 6:

After Schedule 5, insert:

**SCHEDULE 6 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 3B)

*Permanent Building Societies (Amendment) Act 1989*

**Maximum shareholdings**

1. Division 2 (Maximum shareholdings) of Part 5A applies in respect of a relevant interest in shares that arose before (as well as after) the commencement of that Division but does not apply to a relevant interest that arose before 5 June 1987.

SCHEDULE 1 - AMENDMENTS - *continued*

**Substantial shareholdings**

2. (1) Division 3 (Substantial shareholdings) of Part 5A applies in respect of an entitlement to shares that arose before (as well as after) the commencement of that Division.

(2) For the purposes of the application of that Division in respect of an entitlement that arose before that commencement, the entitlement is to be considered to have arisen immediately before that commencement.

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[*Minister's second reading speech made in -  
Legislative Assembly on 28 November 1989  
Legislative Council on 5 December 1989*]

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BY AUTHORITY  
G. J. COSTELLOE, ACTING GOVERNMENT PRINTER - 1969



FIRST PRINT

**PERMANENT BUILDING SOCIETIES (AMENDMENT) BILL  
1989**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Permanent Building Societies Act 1967:

- (a) to replace current section 52A of the Act (which imposes restrictions on the level of shareholdings in permanent building societies) with provisions that impose the same maximum level as the current provisions but that have a wider concept of beneficial ownership of shares and provide for different consequences if the limit is exceeded; and
- (b) to enact new provisions (paralleling provisions in the Companies (New South Wales) Code) dealing with the notification of substantial shareholdings in societies and the power of societies to obtain information from their shareholders and other persons concerning shareholdings.

Currently, section 52A of the Act imposes certain limits on shareholdings in societies (10 per cent for fixed shares, 20 per cent for other classes and 20 per cent for the aggregate of all classes). Those limits can be decreased by the rules of the society concerned, or increased or decreased by the regulations. The section picks up the concept of a "relevant interest" in shares from the Companies (New South Wales) Code ("the Code") for the purpose of extending the narrow concept of shareholding to include all forms of beneficial ownership of shares. Under the current provisions, the consequence of exceeding the permissible maximum is cancellation of the offending shareholding and repayment of capital to the shareholder concerned.

Section 52A is to be repealed and replaced with new provisions the main features of which are as follows:

- \* generally the same maximum shareholding levels will apply as currently apply;
- \* provisions concerning "relevant interests" of shareholders and their "associates" (which are currently contained in the Code and applied referentially by the Act) will be specifically re-stated in the Act;

*Permanent Building Societies (Amendment) 1989*

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- \* a new category of "relevant interest" will be included - that of a person who has, or whose "associate" has, power to dispose of or to exercise control over the disposal of a share;
- \* the consequence of exceeding the maximum shareholding level will be that voting rights are suspended in respect of all shares in which the offending shareholder has a relevant interest and sufficient shares will have to be disposed of to remedy the contravention;
- \* the new provisions will apply to offending shareholdings that arose after 5 June 1987;
- \* a shareholder in a society will be required to give notice to the society on becoming a "substantial shareholder" (i.e. when the shareholder and his or her associates acquire relevant interests in at least 5 per cent of the society's shares), on increasing or decreasing a substantial shareholding and on ceasing to be a substantial shareholder;
- \* a society will be required to maintain a register of substantial shareholders which will be open to inspection by members of the society;
- \* a society will have wide powers to obtain information as to the beneficial ownership of its shares;
- \* the Supreme Court will have wide powers to make orders where the new provisions are not complied with (including power to order, or to prevent, the disposal of shares).

The new provisions relating to substantial shareholdings, the powers of a society to obtain information about the beneficial ownership of its shares and powers of the Supreme Court parallel equivalent provisions of the Code.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a proclaimed day or days.

Clause 3 gives effect to Schedule 1.

Schedule 1 makes the amendments described above.

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FIRST PRINT

**PERMANENT BUILDING SOCIETIES (AMENDMENT) BILL  
1989**

NEW SOUTH WALES

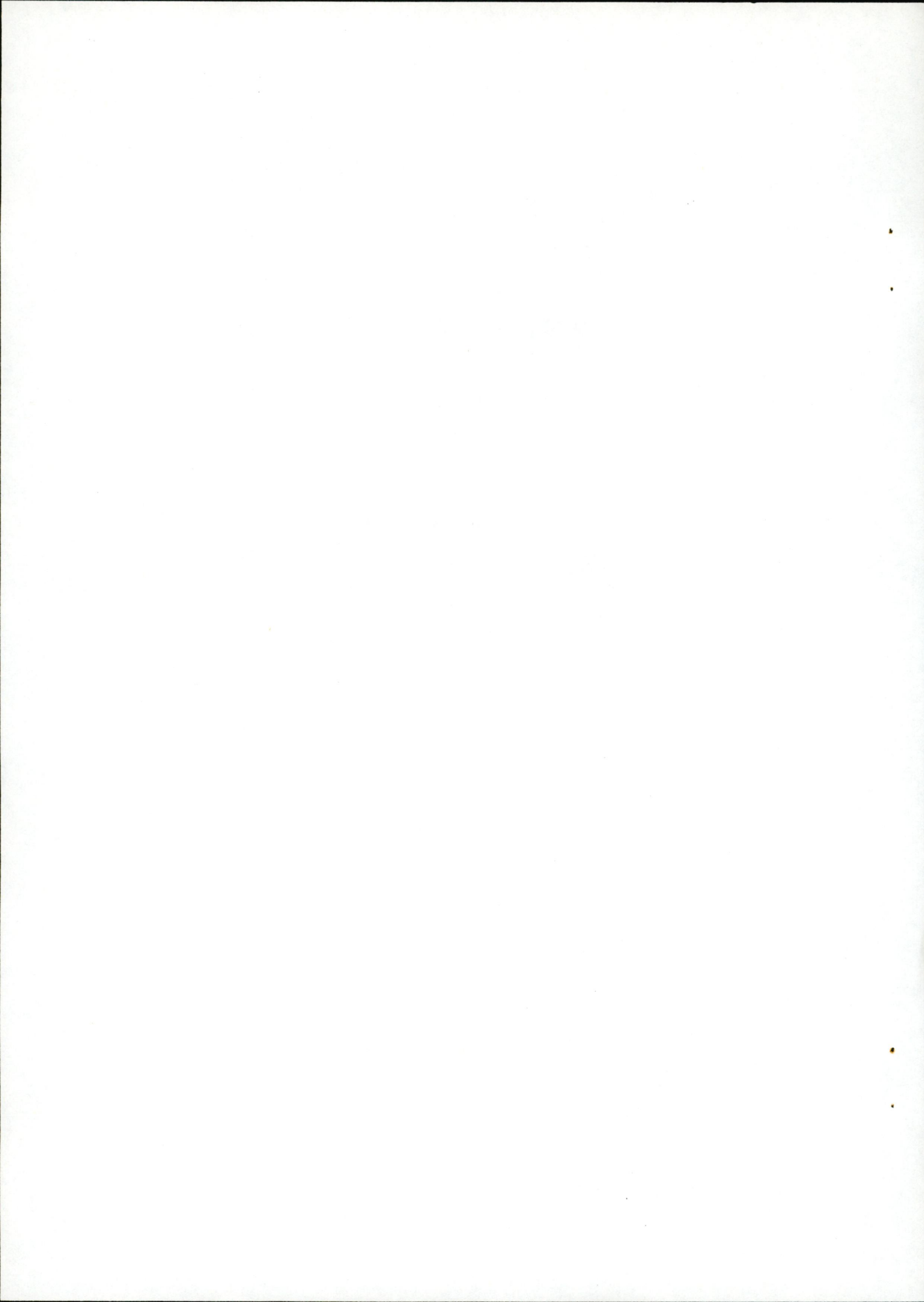


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Permanent Building Societies Act 1967 No. 18

**SCHEDULE 1 - AMENDMENTS**

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**PERMANENT BUILDING SOCIETIES (AMENDMENT) BILL  
1989**

NEW SOUTH WALES



No. , 1989

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**A BILL FOR**

An Act to amend the Permanent Building Societies Act 1967 to make further provision with respect to shareholdings in permanent building societies.

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*Permanent Building Societies (Amendment) 1989*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Permanent Building Societies (Amendment) Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Permanent Building Societies Act 1967 No. 18**

3. The Permanent Building Societies Act 1967 is amended as set out in Schedule 1.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 3B:

After section 3A, insert:

**Savings and transitional provisions**

3B. Schedule 6 has effect.

(2) Section 46A (**Application of Division**):

Omit section 46A (1) (d), insert instead:

(d) a proposed:

(i) acquisition of; or

(ii) offer to acquire; or

(iii) invitation in relation to acquiring,

relevant interests in a class of shares of a society where the acquisition of those interests would result in the limitation of shareholding imposed by section 64I (1) (b) of this Act, or section 47B (3) (b) of the Co-operation Act 1923, being exceeded.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) Section 52A (Limitation of shareholding):

Omit the section.

(4) Part 5A:

After Part 5, insert:

**PART 5A - SHAREHOLDING RESTRICTIONS**

**Division 1 - Definitions etc.**

**What constitutes a "relevant interest" in shares**

64D. (1) For the purposes of this Part, a person has a relevant interest in a share in a society if:

- (a) the person or an associate of the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of that share capital; or
- (b) the person or an associate of the person has power to dispose of or to exercise control over the disposal of the share; or
- (c) the person or an associate of the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

(2) It is immaterial for the purposes of this section whether a power that a person has is express or implied or formal or informal, is exercisable alone or jointly with another person or other persons, cannot be related to a particular share, or is, or is capable of being made, subject to restraint or restriction, and any such power exercisable jointly with another person or other persons is to be considered to be exercisable by either or any of those persons.

(3) A reference in this section to power or control includes a reference to power or control that is direct or indirect or is, or is capable of being, exercised as a result of, or by means of, or in breach of, or by revocation of, trusts, agreements, arrangements, understandings and

SCHEDULE 1 - AMENDMENTS - *continued*

practices, or any of them, whether or not they are enforceable, and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

(4) Without limiting the generality of subsections (1) - (3), where a body corporate has, or is by virtue of this section to be considered to have, a power and:

- (a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power; or
- (b) a person has a controlling interest in the body corporate,

that person is, for the purposes of this section, to be considered to have the same power in relation to that share as the body corporate has or is to be considered to have.

(5) Where a body corporate has, or is by virtue of this section (other than this subsection) to be considered to have, a power, a person (in this subsection referred to as the "relevant person") is, for the purposes of this section, to be considered to have the same power in relation to that share as the body corporate has, or is to be considered to have, if:

- (a) the relevant person has; or
- (b) a person associated with the relevant person has; or
- (c) persons associated with the relevant person together have; or
- (d) the relevant person and a person or persons associated with the relevant person together have,

the power to exercise, or to control the exercise of, the voting power attached to not less than 20 per cent or such other proportion as may be prescribed of the voting shares in the body corporate.



SCHEDULE 1 - AMENDMENTS - *continued*

(6) Where a person:

- (a) has entered into an agreement with respect to an issued share; or
- (b) has a right relating to an issued share, whether the right is enforceable presently or in the future and whether on the fulfilment of a condition or not; or
- (c) has an option with respect to an issued share,

and, on performance of the agreement, enforcement of the right or exercise of the option, that person would have a relevant interest in the share, the person is, for the purposes of this section, to be considered to have that relevant interest in the share.

(7) For the purposes of this section, where a body corporate is, by virtue of subsection (6), to be considered to have a relevant interest in a share and:

- (a) the body corporate or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the withdrawal of, or the exercise of control over the withdrawal of, the share capital subscribed for that share or in relation to the exercise of, or the control of the exercise of, any right to vote conferred on the holder of the share, or in relation to the disposal of, or the exercise of control over the disposal of, that share; or
- (b) a person has a controlling interest in the body corporate; or
- (c) a person has power to exercise, or to control the exercise of, the voting power attached to not less than 20 per cent or such other proportion as may be prescribed of the voting shares in the body corporate,

that person is to be considered to have a relevant interest in that share.

SCHEDULE 1 - AMENDMENTS - *continued*

(8) A body corporate may, by virtue of this section, be considered for the purposes of this Part to have a relevant interest in a share in the body corporate itself.

(9) A relevant interest in a share is not to be disregarded by reason only of:

- (a) its remoteness; or
- (b) the manner in which it arose.

(10) A director of a society is not to be considered to have a relevant interest in a share in the society merely because the director is entitled to withhold consent to a transfer of the share.

(11) The regulations may provide that relevant interests, or particular classes of relevant interests, in shares in societies, or in particular classes of societies, are, in such circumstances and subject to such conditions (if any) as are specified in the regulations, to be disregarded for the purposes of this section.

**Meaning of "associate"**

64E. (1) A reference in this Part to an associate of a person is to be construed as a reference to:

- (a) if the person is a corporation:
  - (i) a director or secretary of the corporation; or
  - (ii) a corporation that is related to that person; or
  - (iii) a director or secretary of such a related corporation;
- (b) where the matter to which the reference relates is shares in a corporation (including, in a case where the first-mentioned person is a corporation, the first-mentioned person) - a person (in this paragraph referred to as the "relevant associate"), being the corporation or any other person, with whom the first-mentioned person has, or proposes to enter into, an agreement, arrangement,

SCHEDULE 1 - AMENDMENTS - *continued*

understanding or undertaking, whether formal or informal and whether express or implied:

- (i) by reason of which the relevant associate, or the first-mentioned person, may exercise, may directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power attached to a share in the corporation; or
  - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or
  - (iii) under which the relevant associate may acquire from the first-mentioned person, or the first-mentioned person may acquire from the relevant associate, shares in the corporation; or
  - (iv) under which the relevant associate, or the first-mentioned person, may be required to dispose of shares in the corporation in accordance with the directions of the first-mentioned person, or of the relevant associate, as the case may be; or
- (c) a person in concert with whom the first-mentioned person is acting, or proposes to act, in respect of the matter to which the reference relates; or
  - (d) a person with whom the first-mentioned person is, by virtue of the regulations, to be regarded as associated in respect of the matter to which the reference relates; or
  - (e) a person with whom the first-mentioned person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
  - (f) if the first-mentioned person has entered into, or proposes to enter into, a transaction, or has done or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned

SCHEDULE 1 - AMENDMENTS - *continued*

in paragraph (b), (c), (d), or (e) - that last-mentioned person.

(2) A person is not to be taken to be an associate of another person by virtue of subsection (1) (b), (c), (d), (e) or (f) by reason only that:

- (a) one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his or her professional capacity or to his or her business relationship with the other person; or
- (b) without limiting the generality of paragraph (a), where the ordinary business of one of those persons includes dealing in securities - specific instructions are given to the person by or on behalf of the other person to acquire shares on behalf of the other person in the ordinary course of that business.

(3) For the purposes of subsection (1) (b), it is immaterial that the power of a person to exercise, control the exercise of, or influence the exercise of, voting power is in any way qualified.

(4) The registrar may, in the registrar's discretion, issue to a nominee corporation a certificate declaring the nominee corporation to be an approved nominee corporation for the purposes of this section and may at any time, in the registrar's discretion, by notice in writing to the nominee corporation, revoke the certificate.

(5) The registrar may, in the registrar's discretion, issue to any person a certificate declaring that specified shares in which that person has a relevant interest are to be disregarded for the purposes of ascertaining the shares to which another person specified in the certificate is entitled, and may at any time, in the registrar's discretion, by notice in writing to the first-mentioned person, revoke the certificate.

**SCHEDULE 1 - AMENDMENTS - *continued***

**Inadvertence, mistake, officers in default**

64F. (1) In determining, for the purposes of a provision of this Part, whether or not a person's contravention of such a provision was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or occurrence, a person's ignorance of, or a mistake on the person's part concerning, a matter of law is to be disregarded.

(2) A reference in this Part to an officer of a society or other body corporate who is in default in respect of a contravention of a provision of this Part is a reference to an officer (including a person who has subsequently ceased to be an officer) who is in any way, by act or omission, directly or indirectly knowingly concerned in or party to the contravention.

**Miscellaneous interpretative provisions**

64G. (1) For the purposes of this Part:

- (a) a reference to a corporation or a body corporate includes a reference to a society; and
- (b) a reference to voting power or a right to vote attached to a share in a body corporate, is, if the body corporate is a society, to be read as a reference to the right to vote conferred on the holder of a share in the body corporate; and
- (c) corporations are to be considered to be related if they would be considered to be related for the purposes of the Companies (New South Wales) Code.

(2) For the purposes of subsection (1) (c), a reference in the Companies (New South Wales) Code to a corporation is to be considered to include a reference to a society.

**Extra-territorial operation of Part**

64H. (1) The obligation to comply with this Part extends to all natural persons, whether resident in the State or in Australia or not and whether Australian citizens or not,

**SCHEDULE 1 - AMENDMENTS - *continued***

and to all bodies corporate or unincorporate, whether incorporated or carrying on business in the State or in Australia or not.

(2) This Part extends to acts done or omitted to be done outside the State, whether in Australia or not.

**Division 2 - Maximum shareholdings**

**Maximum permissible shareholding**

64I. (1) For the purposes of this Division, a person has greater than the maximum permissible shareholding in a society if the person has relevant interests:

- (a) in the fixed shares of a society exceeding 10 per cent, or such other percentage as may be prescribed, of the nominal value of all fixed shares issued by the society; or
- (b) in the shares of a society (being shares of a class other than fixed shares or any other prescribed class) exceeding 20 per cent, or such other percentage as may be prescribed, of the nominal value of all shares of that class issued by the society; or
- (c) in the shares of a society (whether or not including fixed shares or shares of any other class) exceeding 20 per cent, or such other percentage as may be prescribed, of the nominal value of all shares issued by the society.

(2) A percentage applicable under subsection (1) (a), (b) or (c) may be varied in its application to a particular society by being decreased by the rules of the society.

**Consequences of exceeding maximum permissible shareholding**

64J. (1) If a person (referred to in this section as "the offender") has greater than the maximum permissible shareholding in a society:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) the board of the society must, on becoming aware of that fact, direct the holders of shares in which the offender has a relevant interest to dispose of such number of shares as may be necessary to ensure that the offender does not have greater than the maximum permissible shareholding; and
- (b) any entitlement to vote conferred on the holder of a share in the society in which the offender has a relevant interest is suspended and cannot be exercised; and
- (c) any vote cast in contravention of paragraph (b) is to be disregarded.

(2) A direction under this section is to be given in writing and must (subject to any order of the Court under section 64K) be complied with by the shareholder concerned within 1 month after it is given.

Maximum penalty: 100 penalty units.

(3) A direction requiring the disposal of shares is not to be considered to have been complied with unless the disposal of the shares results in the offender ceasing to have a relevant interest in the shares.

(4) Where any question arises under this section as to which of the shares that a person has a relevant interest in are to be disposed of, the question is to be determined:

- (a) in accordance with the rules of the society concerned; or
- (b) to the extent that the rules do not make provision for the determination of the question, in such manner as the board thinks appropriate.

**Court may make orders in respect of disposal**

64K. (1) If a person has been directed by the board of a society under section 64J to dispose of shares, the Supreme Court may, on the application of the registrar, the society or the shareholder, order that the disposal is to be made within such time and subject to such conditions (if any) as the Court thinks fit.

**SCHEDULE 1 - AMENDMENTS - *continued***

(2) If the Court thinks fit, the order may be made subject to a condition that the disposal is not to be made to a particular person or persons or to persons included in a particular class or classes of persons.

**Exceptions**

64L. Section 64J does not apply to an offender:

- (a) who is a holding society created in accordance with section 39A of this Act or section 68A of the Co-operation Act 1923; or
- (b) who acquired the relevant interests concerned in accordance with an approval given under Division 6 of Part 3 (Review of certain proposals for amalgamation, transfer of engagements etc.); or
- (c) who has the relevant interests concerned as a result of a share issue and those relevant interests represent a proportion of the issued shares of the society concerned no greater than the proportion which the person had before the share issue.

**Division 3 - Substantial shareholdings**

**Substantial shareholding and shareholders - meaning**

64M. (1) For the purposes of this Part, a person has a substantial shareholding in a society if:

- (a) in the case of a society the shares in which are not divided into classes of shares - the person is entitled to not less than 5 per cent of the nominal value of all shares issued by the society; or
- (b) in the case of a society the shares in which are divided into 2 or more classes of shares - the person is entitled to not less than 5 per cent of the nominal value of all shares in one of those classes.

(2) For the purposes of this Part, the shares in a society to which a person ("the relevant person"), being the society or any other person, is entitled include:



**SCHEDULE 1 - AMENDMENTS - *continued***

- (a) shares in which the person has a relevant interest; and
- (b) except in the case where the relevant person is a nominee corporation in respect of which a certificate by the registrar is in force under section 64E (4) - shares in which an associate of the person has a relevant interest,

but do not include shares in which an associate of the relevant person has a relevant interest and in respect of which that associate has obtained a certificate from the registrar under section 64E (5).

(3) For the purposes of this Part, a person who has a substantial shareholding in a society is a substantial shareholder in the society.

**Notifiable change - meaning**

64N. (1) For the purposes of this Division, a notifiable change in the entitlement of a person to shares in a society is to be taken to occur if, and only if, there occurs a change in the relevant interest or relevant interests of the person, or in the relevant interest or relevant interests of an associate of the person, in shares in the society.

(2) For the purposes of subsection (1), but without limiting the generality of that subsection, where a person acquires, or disposes of, shares in a society, a change in the relevant interest or relevant interests of the person in shares in the society is to be considered to have occurred.

**Time when substantial shareholding notice required**

64O. For the purposes of this Division:

- (a) a person who becomes required to give a notice under section 64P (1) is to be taken to have become, at the time when the person became a substantial shareholder in the society, required to give a substantial shareholding notice to the society; and
- (b) a person who becomes required to give a notice under section 64Q (1) is to be taken to have

**SCHEDULE 1 - AMENDMENTS - *continued***

become, immediately after the change referred to in section 64Q (1) (a), required to give a substantial shareholding notice to the society.

**Substantial shareholder to notify society of interests**

64P. (1) A person who is a substantial shareholder in a society must give to the society a notice in the prescribed form that:

- (a) states:
  - (i) the person's name and address; and
  - (ii) the prescribed particulars of the shares in the society in which the person or an associate of the person has a relevant interest or relevant interests (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder); and
  - (iii) the prescribed particulars of each such interest; and
  - (iv) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the person or the associate acquired that interest or has that interest; and
- (b) is accompanied by the prescribed documents.

(2) A person required to give a notice under subsection (1) must give the notice within 7 business days after that person becomes aware of the relevant interest or interests by virtue of which the person is a substantial shareholder.

(3) The notice must be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (2).

**SCHEDULE 1 - AMENDMENTS - *continued***

**Substantial shareholder to notify society of changes in interests**

64Q. (1) Where:

- (a) there occurs at a particular time a notifiable change in the entitlement of a person to shares in a society; and
- (b) immediately before the change, the person was a substantial shareholder in the society; and
- (c) immediately after the change, the person is a substantial shareholder in the society and is entitled to a percentage of the shares included in a class of shares in the society, being a percentage that is greater than, or less than, by 1 per cent of the shares included in that class, the percentage of the shares included in that class to which the person was entitled at the time (in this subsection referred to as the "relevant time") when the person last became required to give a substantial shareholding notice to the society,

the person must give to the society a notice in the prescribed form that:

- (d) sets out the person's name; and
- (e) sets out, in relation to each notifiable change in the entitlement of the person to shares in the society (not being a prescribed change) that occurred during the period commencing at the relevant time and ending immediately after the time referred to in paragraph (a):
  - (i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate; and
  - (ii) the date of the change and the prescribed particulars of the change; and
  - (iii) the prescribed particulars of any contract, scheme or arrangement, or any other

SCHEDULE 1 - AMENDMENTS - *continued*

circumstances, by reason of which the change occurred; and

(f) is accompanied by the prescribed documents.

(2) For the purposes of subsection (1), where the shares in a society are not divided into 2 or more classes, those shares are to be considered to constitute a class.

(3) A person required to give a notice under subsection (1) must give the notice within 7 business days after that person becomes aware of the change referred to in subsection (1) (a).

**Person who ceases to be a substantial shareholder to notify society**

64R. (1) A person who ceases at a particular time (in this subsection referred to as the "relevant time") to be a substantial shareholder in a society must give to the society a notice in the prescribed form that:

- (a) sets out the person's name; and
- (b) sets out, in relation to each notifiable change in the entitlement of the person to shares in the society (not being a prescribed change) that occurred during the period commencing at the time when the person last became required to give a substantial shareholding notice to the society and ending at the relevant time:
  - (i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate; and
  - (ii) the date of the change and the prescribed particulars of the change; and
  - (iii) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the change occurred; and
- (c) sets out the date on which the person ceased to be a substantial shareholder in the society and the

**SCHEDULE 1 - AMENDMENTS - *continued***

prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the person ceased to be a substantial shareholder in the society; and

(d) is accompanied by the prescribed documents.

(2) A person required to give a notice under subsection (1) must give the notice within 7 business days after the person becomes aware that the person or an associate has ceased to have a relevant interest or relevant interests in a share or shares in the society to the extent necessary to make the person a substantial shareholder in the society.

**Circumstances to be stated in notice - operation of section 64D**

64S. The circumstances required to be stated in a notice under section 64P, 64Q or 64R include circumstances by reason of which, having regard to the provisions of section 64D:

- (a) a person has a relevant interest in shares; or
- (b) a change has occurred in a relevant interest in shares; or
- (c) a person has ceased to be a substantial shareholder in a society,

respectively.

**Registrar may extend period for giving notice under this Division**

64T. (1) The registrar may, on the application of a person who is required to give a notice under this Division, in the registrar's discretion, extend, or further extend, the period for giving the notice.

(2) An application for an extension under subsection (1) may be made, and the power of the registrar under that subsection may be exercised, notwithstanding that the period referred to in that subsection has expired.

SCHEDULE 1 - AMENDMENTS - *continued*

**Society to keep register of substantial shareholders**

64U. (1) A society is to keep a register in which it must forthwith enter:

- (a) in alphabetical order the names of persons from whom it has received notices under section 64P; and
- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 64Q or 64R, the information given in that notice.

(2) The register is to be open for inspection by any member of the society without charge.

(3) If default is made in complying with this section, the society and any officer of the society who is in default are each guilty of an offence.

Maximum penalty: 5 penalty units.

(4) A society is not, by reason of anything done under this Division:

- (a) to be taken for any purpose to have notice of; or
  - (b) put upon inquiry as to,
- a right of a person to or in relation to a share in the society.

**Offences against certain sections**

64V. A person who fails to comply with section 64P, 64Q or 64R is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

**Civil remedy where failure or default under Division**

64W. (1) A person who fails to comply with section 64P, 64Q or 64R is liable to pay, to any person who suffers loss or damage as a result of the failure, damages in respect of that loss or damage, unless it is proved that the failure was due to the inadvertence or mistake of the first-mentioned person or to his or her not being aware of a relevant fact or occurrence.

**SCHEDULE 1 - AMENDMENTS - *continued***

(2) If default is made in complying with section 64U and an officer or officers of the society is or are in default:

- (a) the society; and
- (b) that officer or each of those officers, as the case may be,

are jointly and severally liable to pay, to any person who suffers loss or damage as a result of the default, damages in respect of that loss or damage.

**Knowledge of employee or agent imputed to employer or principal**

64X. In any proceedings under section 64W or 64ZJ, a person is, in the absence of proof to the contrary, to be presumed to have been aware at a particular time of a fact or occurrence of which an employee or agent of the person having duties or acting in relation to a relevant interest or relevant interests of his or her employer or principal in a share or shares in the society concerned was aware at the time.

**Division 4 - Power of societies to obtain information**

**Definitions**

64Y. In this Division:

"**primary notice**", in relation to shares in a society, means a notice in writing addressed to the holder of the shares requiring the holder to furnish to the society a statement in writing setting out:

- (a) full particulars of his or her relevant interest in the shares and of the circumstances by reason of which he or she has that interest; and
- (b) so far as it lies within his or her knowledge:
  - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (ii) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
- (iii) full particulars of the name and address of each person (if any) who has given to the holder of the shares relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given;

**"relevant instructions"**, in relation to shares, means instructions or directions:

- (a) in relation to the withdrawal of share capital subscribed for the shares; or
- (b) in relation to the acquisition or disposal of the shares; or
- (c) in relation to the exercise of any voting or other rights conferred on the holder of the shares; or
- (d) in connection with any other matter relating to the shares;

**"secondary notice"**, in relation to shares in a society, means a notice in writing addressed to a person requiring the person to furnish to the society a statement in writing setting out:

- (a) full particulars of any relevant interest that the person has in any of the shares and of the circumstances by reason of which he or she has that interest; and
- (b) so far as it lies within his or her knowledge:
  - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares; and
  - (ii) full particulars of each such interest, and of the circumstances by reason of



SCHEDULE 1 - AMENDMENTS - *continued*

- which the other person has that interest; and
- (iii) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given.

**Issue of primary notice**

64Z. A primary notice in relation to particular shares in a society:

- (a) may be given, to the holder of the shares, by the society at any time; and
- (b) must be given, to the holder of the shares, by the society within 7 days after receiving a notice from the registrar requiring the society to do so.

**Issue of secondary notice**

64ZA. (1) Where a society receives, pursuant to a primary notice or secondary notice given to a person in relation to particular shares in the society, information that:

- (a) another person has a relevant interest in any of the shares; or
- (b) another person has given relevant instructions in relation to any of the shares,

a secondary notice in relation to the first-mentioned shares:

- (c) may be given to the other person by the society at any time; and
- (d) subject to subsection (2), must be given to the other person by the society within 7 days after receiving the information, if the information was received

**SCHEDULE 1 - AMENDMENTS - *continued***

pursuant to a notice that was required by section 64Z (b) or by this paragraph to be given.

(2) Where:

- (a) a society has received a notice from the registrar requiring the society to give a primary notice to a holder of shares in the society; and
- (b) the society receives a notice in writing from the registrar to the effect that the society is no longer required to comply with subsection (1) in relation to those shares,

then, notwithstanding anything in this section, the society is not required to give any secondary notices or any further secondary notices, as the case requires, in relation to those shares pursuant to the first-mentioned notice.

**Application to registrar by recipient of notice**

64ZB. (1) A person who:

- (a) receives a primary notice or secondary notice in relation to shares in a society; and
- (b) believes that there are special reasons why particular information that the notice requires him or her to furnish to the society should not be so furnished, or should be so furnished only in a particular form,

may, within 7 business days after he or she receives the notice, apply to the registrar for a certificate under subsection (2).

(2) Where, on application made by a person under subsection (1), the registrar is satisfied that there are special reasons why particular information should not be furnished to a society, or should be so furnished only in a particular form, the registrar may give the person a certificate either:

- (a) referring to the information and stating that the information need not be furnished to the society; or

**SCHEDULE 1 - AMENDMENTS - *continued***

- (b) referring to the information and stating that the information need only be furnished to the society in a form specified in the certificate, as the case may be.

**Compliance with notices**

64ZC. (1) A person who receives a primary notice or secondary notice in relation to shares in a society must, unless within 7 business days after the day on which he or she receives the notice he or she applies to the registrar under section 64ZB in relation to particular information that the notice requires him or her to furnish to the society, comply with the notice within 7 business days after that day.

(2) A person who:

- (a) receives a primary notice or secondary notice in relation to shares in a society; and
- (b) applies to the registrar under section 64ZB for a certificate in relation to particular information that the notice requires him or her to furnish to the society,

must, forthwith after applying to the registrar under section 64ZB, notify the society that he or she has so applied, and must, within 7 business days after receiving notice of the decision of the registrar in relation to his or her application:

- (c) except in a case to which paragraph (d) applies - comply with the primary notice or secondary notice, as the case may be; or
- (d) if the registrar has given him or her a certificate under section 64ZB in relation to some or all of that information, furnish to the society a copy of the certificate together with a statement in writing:
  - (i) setting out so much of the information required by the primary notice or secondary notice, as the case may be, as is not referred to in the certificate; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (ii) if the certificate states that particular information need only be furnished to the society in a specified form - setting out that information in that form.

**Society to keep register**

64ZD. (1) A society must keep a register of the information received by the society pursuant to notices given under this Division being either a register containing:

- (a) the name of each holder of shares in the society to whom the society has given a primary notice; and
- (b) against each such name:
  - (i) the name and address of each other person (if any) who, according to information received by the society under this Division, has a relevant interest in any of the shares, together with particulars of the interest and of the circumstances by reason of which the other person has the interest; and
  - (ii) the name and address of each person who, according to information received by the society under this Division, has given relevant instructions in relation to any of the shares, together with particulars of the relevant instructions; and
- (c) in relation to each item of information entered in the register, the date on which the item was so entered,

or a register in such other form as the registrar approves.

(2) The register is to be open for inspection by any member of the society without charge.

(3) Information that is required by subsection (1) to be entered in a register must be so entered by the society within 2 business days after the society receives the information.

(4) A society is not, by reason of anything done under this section or Division 5 (Enforcement):

**SCHEDULE 1 - AMENDMENTS - *continued***

(a) to be taken for any purpose to have notice of; or  
(b) put upon inquiry as to,  
the right of a person to or in relation to a share in the  
society.

**Offences**

64ZE. (1) If a society fails to comply with section 64Z or 64ZA and an officer of the society is in default, the society and the officer are each guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

(2) A person who fails to comply with section 64ZC is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

(3) If default is made in complying with section 64ZD and an officer of the society is in default, the society and the officer are each guilty of an offence.

Maximum penalty: 5 penalty units.

**Liability for damages**

64ZF. (1) If a society fails to comply with section 64Z or 64ZA and an officer or officers of the society is or are in default:

- (a) the society; and
- (b) that officer or each of those officers, as the case may be,

are jointly and severally liable to pay, to any person who suffers loss or damage as a result of the failure, damages in respect of that loss or damage.

(2) A person who fails to comply with section 64ZC is liable to pay, to any person who suffers loss or damage as a result of the failure, damages in respect of that loss or damage, unless it is proved that the failure was due to the inadvertence or mistake of the first-mentioned person.

**SCHEDULE 1 - AMENDMENTS - *continued***

(3) If default is made in complying with section 64ZD and an officer or officers of the society is or are in default:

- (a) the society, and
- (b) that officer or each of those officers, as the case may be,

are jointly and severally liable to pay, to any person who suffers loss or damage as a result of the default, damages in respect of that loss or damage.

**Protection from frivolous or vexatious requests**

64ZG. A person:

- (a) is not guilty of an offence under section 64ZE (2); and

(b) is not liable to pay damages under section 64ZF (2), in respect of a failure to furnish to a society information that a primary notice or secondary notice in relation to shares in the society required him or her to furnish to the society, if it is proved that:

- (c) at the time when the person received the notice, the information appeared on a register kept by the society pursuant to this Division or Division 3; or
- (d) the giving of the notice was for any reason frivolous or vexatious.

**Division 5 - Enforcement**

**Definition of "Court"**

64ZH. In this Division:

"Court" means the Supreme Court.

**Failure to dispose of shares as directed**

64ZI. If a person has failed to dispose of shares in a society as and when required to do so under Division 2, the Court may, on the application of the registrar or of the society, make either or both of the following orders:

**SCHEDULE 1 - AMENDMENTS - *continued***

- (a) an order directing the society not to make payment, or to defer making payment, of any sum or sums due from the society in respect of any shares to which the failure relates;
- (b) an order vesting in the registrar any shares to which the failure relates.

**Court orders - substantial shareholdings**

64ZJ. (1) Where a person (in this section referred to as the "substantial shareholder") is, or at any time after the commencement of this section has been, a substantial shareholder in a society and has failed to comply with section 64P, 64Q or 64R, the Court may, on the application of the registrar or of the society, whether or not that failure still continues, make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the following orders:

- (a) an order restraining the substantial shareholder, or a person who is an associate of the substantial shareholder, from disposing of, or of any interest in, shares in the society, being shares to which the substantial shareholder is entitled;
- (b) an order restraining a person who is, or is entitled to be registered as, the holder of shares in the society to which the substantial shareholder is or has been entitled from disposing of, or of any interest in, those shares;
- (c) an order restraining the exercise of any voting or other rights conferred on the holder of any shares in the society to which the substantial shareholder is or has been entitled;
- (d) an order directing the society not to make payment, or to defer making payment, of any sum or sums due from the society in respect of any shares to which the substantial shareholder is or has been entitled;

SCHEDULE 1 - AMENDMENTS - *continued*

- (e) an order directing the disposal of, or of any interest in, shares in the society to which the substantial shareholder is or has been entitled;
  - (f) an order vesting in the registrar shares in the society to which the substantial shareholder is or has been entitled, or any interest in such shares;
  - (g) an order directing the society not to register the transfer or transmission of specified shares;
  - (h) an order that any exercise of the voting or other rights conferred on the holder of specified shares in the society to which the substantial shareholder is or has been entitled be disregarded;
  - (i) an order cancelling a contract, arrangement or offer relating to specified shares in the society to which the substantial shareholder is or has been entitled;
  - (j) an order declaring a contract, arrangement or offer relating to specified shares in the society to which the substantial shareholder is or has been entitled to be voidable;
  - (k) for the purposes of securing compliance with any other order made under this section, an order directing the society or any other person to do or refrain from doing a specified act.
- (2) Where, at the hearing of an application under this section, it is proved to the satisfaction of the Court that:
- (a) a person is entitled to shares in a society by reason that another person who is, by virtue of section 64E, an associate of the first-mentioned person has a relevant interest in those shares; and
  - (b) that other person became entitled to that relevant interest within the period of 6 months immediately preceding the filing of the application with the Court,
- then, in determining for the purposes of the application whether the first-mentioned person failed to comply with section 64P, 64Q or 64R, the proof to the satisfaction of the Court of the matters mentioned in paragraphs (a) and (b)



SCHEDULE 1 - AMENDMENTS - *continued*

of this subsection constitutes prima facie evidence that the other person was, for the purposes of section 64E, an associate of the first-mentioned person from the time when that other person became entitled to that relevant interest until the date of the hearing.

(3) Without limiting the nature of the orders that may be made by the Court under subsection (1) directing the disposal of, or of an interest in, a share in a society, such an order may include one or more of the following provisions:

- (a) a provision that the disposal is to be made within such time and subject to such conditions (if any) as the Court thinks fit, including, if the Court thinks fit, a condition that the disposal must not be made to a person who is, or as a result of the disposal, would become, a substantial shareholder in the society;
- (b) a provision that a person specified in the order is liable to pay to the society an amount equal to the amount of any profit made by the person as a result of, or in connection with, the disposal of the shares;
- (c) a provision that a person specified in the order is, for all purposes connected with the disposal of the shares, to be regarded as holding the shares as a trustee for the beneficial owner of the shares.

(4) The Court is not to make an order under this section, other than an order referred to in subsection (1) (c) or (h), if it is satisfied:

- (a) that the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to his or her inadvertence or mistake or to his or her not being aware of a relevant fact or occurrence; and
- (b) that, in all the circumstances, the failure ought to be excused.

**SCHEDULE 1 - AMENDMENTS - *continued***

**Powers of court for purposes of Division 4**

64ZK. (1) Where:

- (a) a person has failed to comply with section 64ZC in relation to a notice given to the person under section 64Z or 64ZA in relation to shares in a society (whether or not the failure still continues); or
- (b) a person has, in a statement furnished to a society pursuant to a notice given to the person under section 64Z or 64ZA in relation to shares in the society, stated that particular information in relation to any of the shares or in relation to a person:
  - (i) who has a relevant interest in any of the shares; or
  - (ii) who has given in relation to any of the shares relevant instructions within the meaning of Division 4,

does not lie within his or her knowledge,

the Court may, on the application of:

- (c) the society; or
- (d) if the notice was required by section 64Z (b) or 64ZA (1) (d) to be given by the society by reason of a notice received by the society from the registrar - the registrar,

make in relation to any of the shares such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the orders referred to in subsection (2).

(2) The orders the Court may make under subsection (1) in relation to shares are as follows:

- (a) an order restraining the holder of the shares from disposing of, or of any interest in, the shares;
- (b) an order restraining the exercise of any voting or other rights conferred on the holder of the shares;

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) an order directing the society not to make payment, or to defer making payment, of any sum or sums due from the society in respect of the shares;
- (d) an order directing the disposal of, or of any interest in, the shares;
- (e) an order vesting in the registrar the shares, or any interest in the shares;
- (f) an order directing the society not to register the transfer or transmission of the shares;
- (g) an order that any exercise of the voting or other rights conferred on the holder of the shares be disregarded;
- (h) an order cancelling a contract, arrangement or offer relating to the shares;
- (i) an order declaring a contract, arrangement or offer relating to the shares to be voidable;
- (j) for the purposes of securing compliance with any other order made under this section, an order directing the society or any other person to do or refrain from doing a specified act.

(3) Without limiting the nature of the orders that may be made by the Court under subsection (1) directing the disposal of, or of an interest in, a share in a society, such an order may include one or more of the following provisions:

- (a) a provision that the disposal must be made within such time and subject to such conditions (if any) as the Court thinks fit, including, if the Court thinks fit, a condition that the disposal must not be made to a particular person or persons or to persons included in a particular class or classes of persons;
- (b) a provision that a person specified in the order is liable to pay to the society an amount equal to the amount of any profit made by the person as a result of, or in connection with, the disposal of the shares;
- (c) a provision that a person specified in the order is, for all purposes connected with the disposal of the

SCHEDULE 1 - AMENDMENTS - *continued*

shares, to be regarded as holding the shares as a trustee for the beneficial owner of the shares.

(4) Where a person has failed to comply with section 64ZC in relation to a notice given to the person under section 64Z or 64ZA in relation to shares in a society, the Court is not to make an order under this section in relation to any of the shares if it is satisfied:

- (a) that, at the time when the person received the notice, the information that the notice required him or her to furnish to the society appeared on a register kept by the society pursuant to Division 3 or 4; or
- (b) that the giving of the notice was for any reason frivolous or vexatious.

(5) Where a person has failed to comply with section 64ZC in relation to shares in a society, the Court is not to make an order under this section in relation to any of the shares, other than an order referred to in subsection (2) (b) or (g), if it is satisfied:

- (a) that the failure was due to the person's inadvertence or mistake; and
- (b) that, in all the circumstances, the failure ought to be excused.

**Interim orders**

64ZL. (1) Where an application is made to the Court for an order under this Part, the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(2) Where the registrar makes an application to the Court for the making of an order under subsection (1) the Court is not to require the registrar or any other person, as a condition of granting an interim order under subsection (1), to give any undertakings as to damages.

**SCHEDULE 1 - AMENDMENTS - *continued***

**Order may include ancillary provisions**

64ZM. An order under this Part may include such ancillary or consequential provisions as the Court thinks just.

**Failure to dispose of share or interest**

64ZN. The Court may direct that, where a share, or an interest in a share, is not disposed of in accordance with an order of the Court under this Part, the share or interest vests in the registrar.

**Order not to be unfairly prejudicial**

64ZO. The Court is not to make an order under this Part if it is satisfied that the order would unfairly prejudice any person.

**Court may direct that notice be published**

64ZP. The Court may, before making an order under this Part, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

**Variation etc. of orders**

64ZQ. The Court may rescind, vary or discharge an order made by it under this Part or suspend the operation of such an order.

**Penalty**

64ZR. (1) A person who contravenes or fails to comply with an order under this Part that is applicable to the person is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

**SCHEDULE 1 - AMENDMENTS - *continued***

(2) Where an offence under subsection (1) is committed by a corporation, each officer of the corporation who is in default is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

**Registrar may deal with interests vested in the registrar**

64ZS. Where a share or an interest in a share vests in the registrar by virtue of an order under this Part or of a direction under section 64ZN:

- (a) the registrar may, subject to any directions of the Court, get in, sell or otherwise dispose of, or deal with, the share or interest as the registrar sees fit; and
- (b) the registrar is to apply any money received in the exercise of a power under paragraph (a) in defraying the costs and expenses of and incidental to the exercise of that power and is to pay the remainder to the Treasurer for payment into the Consolidated Fund.

(5) Schedule 6:

After Schedule 5, insert:

**SCHEDULE 6 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 3B)

*Permanent Building Societies (Amendment) Act 1989*

**Maximum shareholdings**

1. Division 2 (Maximum shareholdings) of Part 5A applies in respect of a relevant interest in shares that arose before (as well as after) the commencement of that Division but does not apply to a relevant interest that arose before 5 June 1987.

SCHEDULE 1 - AMENDMENTS - *continued*

**Substantial shareholdings**

2. (1) Division 3 (Substantial shareholdings) of Part 5A applies in respect of an entitlement to shares that arose before (as well as after) the commencement of that Division.

(2) For the purposes of the application of that Division in respect of an entitlement that arose before that commencement, the entitlement is to be considered to have arisen immediately before that commencement.

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